

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Opoku-Agyemang	Team: Team # 5	CCRB Case #: 201007643	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 06/07/2010 3:20 PM	Location of Incident: Sedgwick Avenue and Cedar Avenue	Precinct: 46	18 Mo. SOL 12/7/2011	EO SOL 12/7/2011	
Date/Time CV Reported Mon, 06/07/2010 3:27 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 06/07/2010 3:27 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Harry Delacruz	20377	941272	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Gabriel Baaith	25605	942970	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Harry Delacruz	Abuse: PO Harry Delacruz stopped § 87(2)(b)	[REDACTED]
B.POM Harry Delacruz	Abuse: PO Harry Delacruz frisked § 87(2)(b)	[REDACTED]
§ 87(4-b) § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

On June 7, 2010, § 87(2)(b) contacted the CCRB by telephone and filed a complaint (Encl. 4A-B).

At approximately 3:20 p.m. on June 7, 2010, § 87(2)(b) was stopped at the intersection of Sedgwick Avenue and Cedar Avenue in the Bronx by PO Harry De La Cruz. The following allegations resulted:

- **Allegation A – Abuse of Authority – PO Harry De La Cruz stopped § 87(2)(b)**
- **Allegation B – Abuse of Authority – PO Harry De La Cruz frisked § 87(2)(b)**
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
- § 87(4-b) § 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

On June 11, 2010, § 87(2)(b) chose to mediate this complaint. However, on July 2, 2010, § 87(2)(b) stated that he was no longer interested in mediating his complaint (Encl. 11A) and on July 20, 2010, the case was returned to the Investigative Unit.

Results of Investigation

Civilian Statement(s)

Complainant/Victim: § 87(2)(b)

- § 87(2)(b) is a 5'10" tall, 260 lb, § 87(2)(b)-old black male with brown hair and hazel eyes. He resides at § 87(2)(b), in the Bronx. He is employed as § 87(2)(b).

CCRB Complaint

On June 7, 2010, § 87(2)(b) called the CCRB to file a complaint and provided the following statement (Encl. 4B).

At approximately 3:20 p.m. on June 7, 2010, § 87(2)(b) was standing at the intersection of Sedgwick Avenue and Cedar Avenue in the Bronx when a marked patrol car pulled up alongside of him. An officer, identified by the CCRB as PO Harry De La Cruz, exited the vehicle and told § 87(2)(b) to remain still. A second officer, identified by the CCRB as PO Gabriel Baaith, remained in the vehicle and did not have any interactions with § 87(2)(b). PO De La Cruz asked § 87(2)(b) to provide his identification and § 87(2)(b) did so. PO De La Cruz then called § 87(2)(b) a "dope fiend." § 87(2)(b) asked why he was being stopped, but PO De La Cruz did not answer. PO De La Cruz patted § 87(2)(b) down and then searched his pockets. While he was searching him, § 87(2)(b) said to PO De La Cruz, "Why are you going into my pockets?" PO De La Cruz responded, "I can do whatever the fuck I want to do." PO De La Cruz returned § 87(2)(b)'s identification and walked away.

CCRB Testimony

On July 29, 2010, § 87(2)(b) was interviewed at the CCRB (Encl. 5A-B).

At approximately 3:20 p.m. on June 7, 2010, § 87(2)(b) was standing at the BX. 40 and BX. 42 bus stop located at the intersection of Sedgwick Avenue and Cedar Avenue in the Bronx, waiting for a bus. He had been standing there approximately for three to four minutes, talking with an acquaintance of his, who § 87(2)(b) knew only by the name § 87(2)(b). There were other individuals waiting for the bus at the bus stop. § 87(2)(b) only knew one of them; § 87(2)(b) knew his name as § 87(2)(b) and stated that he § 87(2)(b).

While § 87(2)(b) was speaking to § 87(2)(b), a marked car pulled up besides them. Two uniformed officers, PO De La Cruz and PO Baaith, exited and PO De La Cruz asked him what he was doing. § 87(2)(b) replied that he was waiting for a bus. PO De La Cruz then asked § 87(2)(b) for identification. § 87(2)(b) gave his ID card to PO De La Cruz and PO De La Cruz told him to turn around. When § 87(2)(b) turned around, PO De La Cruz stood closely behind him and asked him if he had “anything” on his person. PO De La Cruz proceeded to pat § 87(2)(b)’s pockets but did not put his hands inside the pockets. PO De La Cruz then began whispering into his ear, saying, “You think you are a good guy, you deserve to be in jail, you ain’t nothing but a dope fiend.” PO De La Cruz did not say anything else to § 87(2)(b). He returned § 87(2)(b)’s ID card, returned to the patrol car, and drove off.

Telephone Statement

On September 2, 2010, the CCRB contacted § 87(2)(b) and obtained a brief telephone statement (Encl. 5C).

§ 87(2)(b) stated that he had no bags with him before or during his interaction with PO De La Cruz. He did not recall exactly what he had in his pockets that day but stated that normally all he has are his wallet, his keys, a pack of cigarettes, and a lighter. He stated that he was not frisked by PO De La Cruz during this incident but that PO De La Cruz simply asked for his ID. § 87(2)(b) gave his wallet to PO De La Cruz and then PO De La Cruz looked through the wallet and took out the ID card.

Attempts to Contact Civilians

§ 87(2)(b) provided the first names of two witnesses, § 87(2)(b) and § 87(2)(b). § 87(2)(b) could not provide any contact information for § 87(2)(b). He, however, stated that § 87(2)(b) resided in § 87(2)(b) (Encl. 3A-B). A Lexis-Nexis search, however, provided no listings for an individual with the first name § 87(2)(b) residing in that building.

NYPD Statement(s):

Subject Officer: PO HARRY DE LA CRUZ

- Det. De La Cruz is a § 87(2)(b)-old, 6’3” tall, 180lb, Hispanic male with black hair and black eyes.
- On June 7, 2010, PO De La Cruz worked in the 46th Precinct and was partnered with PO Gabriel Baaith and assigned to Conditions and Prisoner Transport in a marked patrol car. He worked from 9:00 a.m. to 6:05 p.m. and was uniformed.

Memo Book

PO De La Cruz's memo book (Encl. 6A-B) indicates that at 3:10 p.m. on June 7, 2010, he prepared a UF250 for a stop of § 87(2)(b) in front of 1793 Sedgwick Avenue because of a suspicious bulge. The bulge turned out to be six packs of cigarettes in a black bag tucked into his waistband. There is a note that § 87(2)(b) said to PO De La Cruz, "I'm gonna fucking have your job" and "I hate you guys."

CCRB Testimony

On September 2, 2010, PO Harry De La Cruz was interviewed at the CCRB (Encl. 6C-D).

PO De La Cruz explained that the neighborhood where this incident took place is a high crime neighborhood that had seen a large number of shootings around the time of this incident as a result an ongoing gang war between the RPT gang, which operated out of the neighboring River Park Towers, and the BMG gang, which operated out of the nearby Burnside neighborhood. PO De La Cruz and PO Baaith were assigned to patrol the area as a result of these incidents.

PO De La Cruz and PO Baaith were driving slowly down Sedgwick Avenue when PO De La Cruz noticed § 87(2)(b) pacing besides 1793 Sedgwick Avenue. There was a bus stop at the end of the same block but § 87(2)(b) was in the middle of the block and was far enough away from the bus stop that PO De La Cruz did not believe that he was waiting for a bus. He noticed that § 87(2)(b) was holding a large bulge underneath his t-shirt at his waistband with one of his hands. PO De La Cruz found the bulge and § 87(2)(b)'s behavior suspicious so he exited the patrol car and approached § 87(2)(b). PO Baaith also exited the car but did not approach § 87(2)(b).

PO De La Cruz asked § 87(2)(b) if he had any weapons on him. § 87(2)(b) said he didn't. PO De La Cruz placed his hands on § 87(2)(b)'s waist and informed him that he was going to frisk him. PO De La Cruz proceeded to pat down the bulge and § 87(2)(b)'s waistline. PO De La Cruz felt the bulge and it felt like a soft box so he stopped and explained to § 87(2)(b) that he had been stopped because of the bulge underneath his shirt. § 87(2)(b) removed the bulge of underneath his shirt and showed it to PO De La Cruz who saw that it was a plastic bag with approximately six packs of cigarettes in it. PO De La Cruz requested § 87(2)(b)'s ID card, filled out a UF250 stop and frisk report and left.

PO De La Cruz denied having cursed while speaking with § 87(2)(b) or having placed his hands inside his pockets or frisked any part of § 87(2)(b)'s body besides the area around the bulge.

Witness Officer: PO GABRIEL BAAITH

- PO Baaith is a § 87(2)(b)-old, 5'11" tall, 272lb, black male with black hair and brown eyes.
- On June 7, 2010, PO Baaith works in the 46th Precinct and was partnered with PO De La Cruz and assigned to Conditions and Prisoner Transport in a marked patrol car. He worked from 9:00 a.m. to 6:05 p.m. and was uniformed.

Memo Book

PO Baaith has no entries in his memobook (Encl. 7A) regarding this incident.

CCRB Testimony

On September 9, 2010, PO Gabriel Baaith was interviewed at the CCRB (Encl. 7B-C).

PO Baaith stated that he was familiar with the intersection of Cedar Avenue and Sedgwick Avenue but did not recall having had interactions with civilians at that location on June 7, 2010. He did not recognize a photograph of § 87(2)(b) and did not recall whether or not he was partnered with PO Harry De La Cruz on this day or having witnessed any interaction between PO De La Cruz and a civilian at this location.

NYPD Document(s)

UF250 Stop and Frisk Logs

- Three UF250 logs (Encl. 8A-C), covering the 46th Precinct from 6:00 a.m. to 11:59 p.m. on June 7, 2010, show no stop and frisk report for filed for a stop of § 87(2)(b) or any unidentified individuals. They also showed no stop and frisk reports filed by either PO De La Cruz or PO Baaith. A request to the NYPD Criminal Records Section for such any such UF250s and they indicated that they had no such records (Encl. 12F).

Status of Civil Proceedings

- § 87(2)(b) has not filed a Notice of Claim with the City of New York with regards to this incident as of October 19, 2010 (Encl. 11B).

Civilian(s) Criminal History

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
[REDACTED]
 - [REDACTED]
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[REDACTED]
 - [REDACTED]
[REDACTED]

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian(s) CCRB History

- § 87(2)(b) has filed the following CCRB complaints (Encl. 2C):

- § 87(2)(b)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

- § 87(2)(b)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Subject Officer(s) CCRB History

- PO Harry De La Cruz has been a member of the service for four years and there are no substantiated CCRB allegations against him (Encl. 2A-B).

Conclusion

Identification of Subject Officer(s)

- PO De La Cruz acknowledged stopping and frisking § 87(2)(b) on June 7, 2010.

Allegations Not Pleaded

- In his initial CCRB complaint, § 87(2)(b) alleged that PO De La Cruz searched inside his pockets and that when he protested, PO De La Cruz replied, "I can do whatever the fuck I want to do." However, in his sworn CCRB statement, § 87(2)(b) stated definitively that PO De La Cruz frisked his pockets but did not put his hands inside the pockets. He did not repeat the discourtesy allegation either. § 87(2)(g) [REDACTED]
[REDACTED] Furthermore, in a telephone statement provided after his sworn CCRB statement, § 87(2)(b) stated that PO De La Cruz did not frisk him during this incident. However, because § 87(2)(b) did make this allegation during his sworn CCRB statement and because PO De La Cruz admitted to frisking § 87(2)(b) the frisk allegation will be pleaded.
- While PO Baaith was identified as PO De La Cruz's partner during this incident, the statements of both § 87(2)(b) and PO De La Cruz clearly indicate that PO Baaith had no interaction with § 87(2)(b) and played no role in his stop. § 87(2)(g) [REDACTED]

Investigative Findings and Recommendations

Allegation A – Abuse of Authority – PO Harry De La Cruz stopped § 87(2)(b) [REDACTED]

Allegation B – Abuse of Authority – PO Harry De La Cruz frisked § 87(2)(b) [REDACTED]

As previously assessed in the Allegations Not Pleaded section, § 87(2)(b) made inconstant and contradictory statements regarding PO De La Cruz's actions during this incident. He initially stated that PO De La Cruz searched him and spoke to him discourteously, then that PO De La Cruz only frisked him, and then that PO De La Cruz did not frisk him at all. § 87(2)(g)

§ 87(2)(g)

PO De La Cruz stated, in his memo book entry and in his CCRB statement, that he stopped § 87(2)(b) because of a bulge underneath his shirt. PO De La Cruz was assigned to patrol the neighborhood where this incident occurred because of a violent gang war that was occurring in the neighborhood around the time of this incident. While on patrol, PO De La Cruz saw § 87(2)(b) was pacing along a block in the neighborhood while holding a bulging object at his waistband, underneath his t-shirt. PO De La Cruz suspected that the bulge underneath § 87(2)(b)'s shirt might have been a weapon. PO De La Cruz approached and asked § 87(2)(b) if he had a weapon on him. § 87(2)(b) stated that he did not. PO De La Cruz proceeded to frisk the bulge at § 87(2)(b)'s waist. The bulge did not feel like a weapon, so he went no further. § 87(2)(b) voluntarily removed the object and showed PO De La Cruz that it was a bag filled with packs of cigarette.

Kamins, New York Search & Seizure indicates that the courts have held that officers are allowed to stop suspects based on "furtive behavior of defendants prior to questioning" (Kamins, 2-60) (Encl. 1D) and cites the example of two officers who observed two individuals in a neighborhood with a high incidence of burglaries walking with bags and "moving their heads from side to side in a furtive manner." § 87(2)(g)

§ 87(4-b) § 87(2)(g)

Team: 5

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Investigator: _____ Alexander Opoku-Agyemang February 1, 2011
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____

	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date